IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.384 OF 1994
IN
INSOLVENCY PETITION NO.50 OF 1989

Kanta P. Mehta ....Appellant

V/s.

Krishnan B. Mehta & Anr. ....Respondents

And

Ex-parte :

The Official Assignee of Bombay ....Original Petitioner

Mr.S.H. Doctor with Mr.S.R. Moghe i/b Mehta & Girdharlal for the Appellant.

Mr.Kishor Jain for Respondent No.3.

Ms.Pradhan, 1st Assistant Master - Official Assignee.

**CORAM : A.P. SHAH AND**
**S.J. VAZIFDAR, JJ.**
**DATED : 24TH FEBRUARY, 2005.**

**P.C.** :

1. This is an Appeal against the order of the learned single Judge dated 7th June, 1994 making the Rule Nisi absolute, thereby committing the Appellant to imprisonment. The Appellant is 70 years old. That

however by itself may not entitle her to succeed.

2. In the facts and circumstances of the case however we are of the view that the impugned order is liable to be set-aside. The learned single Judge by the impugned order merely stated that the Appellant had not complied with the requisition of the Official Assignee. The Appellant was to file an affidavit containing the details of the accounts. The Appellant filed an affidavit contending that she was not in possession of all the documents. The learned Judge declined to accept the statement and observed : "It is difficult to accept the said statement on the face of it". Nothing more has been stated in the impugned order. There are no reasons why the learned Judge found it difficult to accept the statement.

3. The rule nisi was issued calling upon the Appellant to show cause why she should not be committed to jail for having failed and neglected to attend the Official Assignee’s office for her further examination touching her estate and affairs and for bifurcation of the books of accounts and office records and also to comply with various other requisitions pertaining to her accounts.

4. The Appellant filed a detailed affidavit setting out various difficulties encountered by her. We are unable to state that what is contained in her affidavit is false.

5. It is pertinent to note that Bhagat & Co., Chartered Accountants by a letter dated 20th August, 1994 inter-alia stated that the files, registers and other records to be examined pertained to various places of business ; that the records in respect of each scheme of deposit would require to be segregated and that it was difficult even for them to prepare the accounts. They further noted that the authorities in Bangalore had seized voluminous records of the Appellant at Bangalore and that completion of accounts on the basis of partial records could not be done.

6. By a letter dated 13th September, 1994 the Appellant's advocate had informed the Official Assignee that the Appellant did not have any representatives who was aware of the account. They more over stated that the Appellant who is a widow, did not know anything with regard to accounts and was unable to understand anything in regard thereto.

7. There is nothing to suggest that what is

stated by the Chartered Accountants and the Appellant’s advocate is not correct. In the circumstances, we are of the view that committing the Appellant to imprisonment in the facts and circumstances of the case is not justified.

8. The Appeal is therefore, allowed. The impugned order is set-aside. There shall be no order as to costs.